

HARRIS BEACH PLLC
ATTORNEYS AT LAW

99 GARNSEY ROAD
PITTSFORD, NY 14534
(585) 419-8800

FRANK C. PAVIA

DIRECT: (585) 419-8709
FAX: (585) 419-8811
FPAVIA@HARRISBEACH.COM

April 6, 2015

**FOR SETTLEMENT PURPOSES ONLY AND
WITH FULL RESERVATION OF RIGHTS**

Lauren Charney, Esq.
Assistant Regional Counsel
US Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007

*Re: Lower Ley Creek Subsite of Onondaga Lake Superfund Site
Notice to Perform Remedial Option*

Dear Ms. Charney:

On behalf of the Town of Salina Town Board (the "Town Board"), we write in response to the March 3, 2015 notice letter issued by the US Environmental Protection Agency ("EPA") regarding the completion of a remedial design for the Lower Ley Creek subsite (the "Subsite").

On February 24, 2015, the Town Board presented to EPA, and a number of parties EPA has identified as potentially responsible parties ("PRPs"), a proposal by which the former Town of Salina Landfill (the "Landfill") would accept approximately 150,000 cubic yards of non-hazardous soils and sediment excavated from the Subsite. This proposal was presented in response to EPA's previous inquiries regarding the possibility of a local disposal option for the soils and sediments that will be removed from the Subsite. It is apparent that a local disposal option will provide a cost effective alternative to transporting and disposing these materials to an out-of-state facility, therefore substantially reducing the overall cost of the anticipated remediation for the Subsite.

Because of the Town of Salina's (the "Town") limited financial resources, and the significant expenditures it has already incurred in closing the Landfill, the Town Board can not commit additional taxpayer funds toward the remedial design or action for the Subsite. Moreover, in light of the approximately \$22 million EPA has received from the GM bankruptcy estate in order to address the contamination existing at the Subsite, the Town Board believes there are adequate funds to complete the necessary remedial design and action if a cost-effective solution is implemented. The Landfill presents an optimum disposal option since it is already designed and constructed to meet applicable New York State requirements, including the construction of a pretreatment plant which treats leachate generated at the Landfill before its conveyance to the County's wastewater treatment plant.

With this in mind, the Town Board authorized its engineers, Clough Harbour & Associates ("CHA"), to develop the following approach for the Landfill to accept the expected volume of materials from the Subsite:

- A 7.25-acre area being allocated to accommodate the disposal of approximately 150,000 cubic yards of soil/sediment.
- A 25-foot buffer for transition zone/work zone being required raising the total acreage to approximately 8.5 acres.
- A stone access being constructed to the top of Landfill.
- The existing topsoil cover for the Landfill being removed by a dozer and stockpiled.
- 75% of the barrier protection layer (or as much as practical) being removed.
- A 20-foot swath of geomembrane around the perimeter of the disposal cell being cut, and the geomembrane on a 25-foot grid within interior punctured.
- The remainder of the gas venting layer and membrane remaining in place.
- The soils and sediments being placed in the disposal cell.
- Recapping the disposal cell to match existing cap profile.
- Reuse of as much barrier protection soils and topsoil as possible.
- Re-seeding cap plus areas where soils were stockpiled.

As you know, a capital cost estimate of \$1,173,647 has been determined for providing the Landfill as the local disposal option for the Subsite. The details supporting this estimate have already been provided to your office. An estimate of \$234,729 was further calculated for the necessary permitting, engineering and construction oversight services related to the modification of the Landfill in order to accept the Lower Ley Creek materials. The costs for these services are not in addition to what EPA has estimated as the total engineering costs required for the Subsite but, instead, represent that portion of the total EPA cost estimate allocated for the implementation of the local disposal option at the Landfill.

The capital cost estimate does not take into consideration certain EPA assumptions concerning mobilization and disposal costs, such as EPA estimates for mobilization and soils/sediment load out and disposal. The Town Board thus reserves the right to re-visit these assumptions with EPA to determine whether the capital cost estimate presented herein should be further revised.

An estimate of operations and maintenance ("O&M") costs has also been prepared for the Landfill, which is approximately \$240,000 per year. EPA has already agreed that an incremental O&M cost associated with the disposal of the Subsite materials is acceptable. Therefore, we propose that a 10% increment (e.g., \$24,000 per year) is reasonable for the additional O&M associated with the Lower Ley Creek disposal cell. Accordingly, the net present value of the 30-year annual cost, at a discount rate of 1.68%, is \$561,937.21.

In short, the Town Board offers, as its contribution to resolving the Town's potential PRP liability to the Subsite, the disposal of the Lower Ley Creek materials into the Landfill conditioned upon payment of the estimated total cost of \$1,408,376 from either the GM bankruptcy settlement funds or the identified PRPs. The Town Board is willing to assume payment of its respective share of the projected O&M costs (i.e., $\$561,937.21 \div 19$ (current number of identified PRPs) = \$29,575.64). However, the remaining balance of O&M's costs would again be paid out of either the GM settlement funds or on a *pro rata* share from the identified PRPs. The Town Board requires that CHA remain engaged for the permitting,

engineering and construction oversight for the disposal option to ensure that it meets the applicable Landfill closure requirements.

As explained above, the Town is not in a position to pay the costs associated with either the remedial design or action contemplated for the Subsite, or the disposal option beyond its allocated share of the projected O&M expense. The Town has already expended in excess of \$13 million in closing the Landfill and constructing a new pretreatment plant.

The Town will nevertheless accept, in perpetuity, the disposal of the Subsite materials into the Landfill, at a lower cost compared to the other disposal options contemplated by EPA. In return, the Town Board does require that the Town receive contribution protection under applicable state and federal for any and all potential claims of liability (including claims for monetary damages and injunctive relief) associated with the Subsite, as well as a release of liability from the identified PRPs and a covenant not to sue for those matters subject to the release. The Town would reserve all rights it may have as against any non-participating third parties. Lastly, the foregoing provisions would be included in an administrative consent order with EPA and/or a settlement agreement with the identified PRPs, the terms of which are deemed satisfactory by the Town Board.

We anticipate that EPA will need time to review the Town Board's proposal, and present questions or comments concerning the technical approach and estimated costs. Towards that end, the Town Board will make CHA available, if necessary, to address any questions regarding the proposal.

Very truly yours,



Frank C. Pavia

FCP:cms
cc:

Town Board of the Town of Salina
Robert D. Ventre, Esq.
Christopher A. Burns, Ph.D., P.G.
PRP Group Counsel (per 2/24/15 correspondence)